

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3063 of 1998

to

FIRST APPEAL No. 3085 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

STATE OF GUJARAT

Appearance:

MR GHANSHYAM AMIN for appellant
MR MR RAVAL, AGP for respondents no.1 & 2
MR GM AMIN for Respondent No. 3- claimant.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 05/03/99

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

Admitted. Mr. M.R.Raval, learned Assistant Government Pleader waives service of notice on behalf of respondents no.1 & 2 and Mr. G.M. Amin, learned Counsel waives service of notice on behalf of the claimants in each appeal. At the joint request of learned advocates appearing for the parties, all these appeals are taken-up for final hearing today.

2. By means of filing these appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the acquiring body has challenged legality of common judgment and award dated November 29, 1997 rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad in Land Acquisition Reference Cases No. 32/92, 34/92, 572/92 to 574/92, 581/92 to 591/92, 598/92 to 603/92 and 605/92. All the above-referred to references were consolidated with Land Acquisition Reference Case No. 33/92, which was treated as main case and parties had led common evidence therein. Agricultural lands of village Vanthvali were placed under acquisition pursuant to publication of preliminary notification on June 27, 1990 which was issued under section 4(1) of the Land Acquisition Act, 1894. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

3. The Executive Engineer, Shedhi Project had proposed to the State Government to acquire agricultural lands of village Vanthvali, Taluka : Mahemadavad, District : Kheda for public purpose of Varsola Canal of Shedhi river. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Vanthvali were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in Official Gazette on June 27, 1990. Land owners whose lands were proposed to be acquired were served with notices and they had filed their objections against proposed acquisition. After considering their objections, Special Land Acquisition Officer, Narmada Yojana, Nadiad had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that agricultural lands of village Vanthvali which were specified in the notification published under section 4(1) of the Act were needed for public purpose of Varsola Canal of Shedhi river. Therefore, declaration under section 6 of the Act was made which was published in Official Gazette on

December 5, 1990. The interested persons were thereafter served with notices for determination of compensation of the acquired lands. The claimants had appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 2000/- per Are. Having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated July 22, 1991 offered compensation to the claimants at the rate of Rs. 320/per Are. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring Special Land Acquisition Officer to refer the matters to the Court for determination of compensation of the acquired lands. Accordingly, references were made to the District Court, Kheda at Nadiad, which were numbered as mentioned earlier. In the reference applications it was pleaded by the claimants that their agricultural lands which were acquired were highly fertile and as they were taking three crops in a year, they were entitled to enhanced compensation. What was claimed therein was that the price of lands situated nearby was very high at the relevant time and, therefore, they should be awarded compensation at the rate of Rs. 2000/- per Are. On behalf of the Special Land Acquisition Officer, Nadiad as well as present appellant, written statement was filed at Exh.8 controverting the averments made in the reference applications. In the reply, it was stated that compensation of the acquired lands was determined by the Special Land Acquisition Officer after considering the fertility, income, crop etc. and, therefore, additional amount of compensation should not be awarded to the claimants. It was also claimed therein that a just compensation was determined by the Special Land Acquisition Officer and, therefore, the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were raised by the reference court. Neither the claimants, nor acquiring authorities had led any oral evidence to substantiate their respective cases. However, on behalf of the present appellant, sale indexes were produced at Exhs. 40 to 45; whereas on behalf of the claimants, Village Form No. 7/12 pertaining to acquired lands were produced at Exhs. 24 to 36. The claimants had also produced previous award of the Court rendered in Land Acquisition Reference No.696/89 in respect of lands of village Makva, wherein market value of the lands of the said village was determined at the rate of Rs. 1752/per Are as on August 14, 1986 which was the date of publication of notification issued under section 4(1) of the Act. The claimants had produced copy

of judgment of High Court rendered in First Appeal No. 2546/93 at Exh.21, which indicated that the appeal filed by the acquiring authorities against award of the reference court in Land Acquisition Reference No. 696/89 was dismissed and the award was upheld. Yet another award of the reference court was produced by the claimants at Exh.22. It related to lands of village Devki-Vansol. Therein, preliminary notification issued under section 4(1) of the Act was published on November 13, 1978 and the Court had determined market value of the lands acquired at the rate of Rs. 733/- per Are. The claimants had produced judgment of the High Court at Exh.23, which indicated that First Appeal Stamp No. 15806/90 which was directed against judgment of the reference Court rendered in Land Acquisition Reference No. 30/85 in respect of lands of village Devki-Vansol was rejected. On behalf of the present appellant, previous award of the reference court rendered in Land Acquisition Reference Case No. 116/85 was produced at Exh. 48. That award related to lands of village Kesara and the reference Court had determined market value of the acquired lands at the rate of Rs. 540/- per Are as on September 22, 1983, which was the date of publication of notification under section 4(1) of the Act. After considering the map which was produced by the acquiring body at Exh.49, the reference court deduced that boundaries of village Vanthvali and village Devki-Vansol were common and, therefore, previous award of the reference court rendered in respect of lands of village Devki-Vansol was comparable as well as relevant for the purpose of ascertaining market value of the lands of village Vanthvali. Placing reliance on the previous award rendered in respect of lands of village Devki-Vansol, the reference court held that market value of agricultural lands of village Vanthvali in the year 1978 was Rs. 733/-per Are. The reference court was of the opinion that there was always rise in price of land with the passage of time and, therefore, claimants were entitled to rise in price of lands at the rate of 5% per annum, as there was gap of time between the notification issued under section 4(1) of the Act in case of lands of village Devki-Vansol and notification which was issued under section 4(1) of the Act for acquiring lands of village Vanthvali. In the ultimate decision, the reference court has held that the claimants are entitled to compensation at the rate of Rs. 1170/- per Are, by the impugned common award, giving rise to present appeals.

4. Mr. G.H.Amin, learned Counsel for the appellant submitted that village Kesara is near to village

Vanthvali and, therefore, previous award of the reference court rendered in respect of lands of village Kesara ought to have been relied upon by the reference court while determining market value of the acquired lands on the relevant date. As against this, Mr. G.M. Amin, learned Counsel appearing for the claimants asserted that previous award of the reference court passed in respect of lands of village Devki-Vansol as well as lands of village Makva were comparable as well as relevant for the purpose of determining market value of the acquired lands and, therefore, the appeals should not be entertained.

5. By order dated February 5, 1999, Office was directed to call for R & P of the case. The record of the case is received by the Court and we have gone through the record of the case.

6. Heard the learned Counsel for the parties. As noted earlier, no oral evidence was led by the claimants to substantiate their claim advanced in the reference applications. Similarly, neither on behalf of the present appellant nor on behalf of the respondents no.1 & 2, oral evidence was led to substantiate the assertions made in the written statement. The parties had merely produced previous awards of the reference court and judgments of the High Court in support of their respective cases. In Kanwar Singh and others v. Union of India, Civil Appeal No. 7690/94 decided on October 30, 1998, the Supreme Court has held that generally there would be different situation and potentiality of the lands situated in two different villages and unless it is proved that the situation and potentiality of the lands in two different villages are same, previous awards cannot be relied upon. The Supreme Court has ruled that if the Courts go by the compensation awarded to the claimants of adjoining village, it would not lead to the correct assessment of market value of the land acquired. What is emphasised by the Supreme Court is that, for example- village 'A' adjoins village 'B', village 'B' adjoins village 'C', village 'C' adjoins village 'D', so on and so forth and in that process the entire area would be covered, but price of land in particular village cannot be determined on the basis of price of land prevailing in another case unless situation and potentiality of the lands in two different villages is the same. In our view, the claimants ought to have adduced cogent and reliable evidence to establish that situation and potentiality of the lands covered by previous awards were same as that of the lands acquired. Similarly, it should have been established by the present appellant that the situation and potentiality of the

lands of village Kesara were similar to that of lands of village Vanthvali. Under the circumstances, we are of the opinion that in absence of any such evidence, reliance should not have been placed by the reference Court on previous awards for ascertaining market value of agricultural lands of village Vathvali as on June 27, 1990 which was the date of publication of notification under section 4(1) of the Act. Except previous awards of the Courts, no other evidence was adduced either by the claimants or by the acquiring body to enable the Court to determine market value of the acquired lands. The Supreme Court has emphasised in several reported decisions that in compulsory acquisition of land it is duty of the Court to determine just compensation payable to the claimants. Under the circumstances, the only course open to this Court is to remand the matters to the reference Court with a liberty to parties to lead evidence in support of their respective cases which would enable Court to determine correct market value of the acquired lands.

For the foregoing reasons, all the appeals succeed. The impugned common judgment and award dated November 29, 1997 rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad in Land Acquisition Reference Cases No. 33/92, 34/92, 572/92 to 584/92, 581/92 to 591/92, 598/92 to 603/92 and 605/92, is hereby set aside. The matters are remitted to Reference Court and liberty is reserved to the parties to lead fresh evidence in respect of market value of the lands acquired. After the evidence is led, Court shall determine market value of the acquired lands on merits and in accordance with law, without being influenced in any manner by this judgment. It hardly needs to be emphasised that the preliminary notification under section 4(1) of the Act was published on June 27, 1990 and, therefore, the Reference Court shall endeavour to dispose of the reference applications as early as possible and preferably within three months from today. There shall be no order as to costs.

Office is directed to send back R & P to the concerned Court immediately.

(patel)